

## THE FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2005

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Ordered to be printed

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Mr. Specter, from the Committee on the Judiciary, submitted the following

### R E P O R T

together with

### ADDITIONAL AND MINORITY VIEWS

The Committee on the Judiciary, to which was referred the bill (S. 852) to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes, reports favorably thereon, with amendments, and recommends that the bill, as amended, do pass.

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adopted a sophisticated electronic claims submission system. These entities (or new entities drawing upon the expertise of these entities) would be available to handle claims on behalf of the Department of Labor and/or to assist in training of claims handling personnel. The costs of retaining such entities would be borne entirely by the Fund.

*Critics' Contention No. 10:* Critics contend that legislation that imposes a set of medical criteria in the tort system would be preferable to the trust fund created in S.852.

*Response:* The Committee received significant testimony establishing that the current system for compensating asbestos victims is broken. Victims are dying while they wait for their day in court. When they finally receive their day in court, victims often receive only a small percentage of the costs involved in our tort system, or if the defendant has been forced to file for bankruptcy, then victims receive little or no compensation. This dire situation cries out for a solution outside of the court system that streamlines the claims process for victims; ensures that they receive timely and fair compensation relative to the severity of their injuries; and protects compensation they receive from subrogation by insurance companies.

According to the most recent RAND study, asbestos victims receive an average of only 42 cents for every dollar spent on asbestos litigation. Thirty-one cents of every dollar have gone to defense costs, and 27 cents have gone to plaintiffs' attorneys and other related costs. Enactment of a medical criteria bill for asbestos would fail to reduce the high transaction costs of the asbestos tort system.

Medical criteria bills do nothing to protect businesses from going bankrupt or victims who were injured by bankrupt companies from receiving fair compensation. Many asbestos manufacturers are in bankruptcy proceedings and therefore are immune from suit. Victims like our nation's veterans are unable to recover for asbestos exposure they received while serving the country in the current tort system. The Judiciary Committee recently received the following testimony from Hershel W. Gober, National Legislative Director, Military Order of the Purple Heart:

The avenues open to veterans to seek compensation through the tort system, however, are very limited. The Federal government, as the members of this Committee know, has sovereign immunity, thereby restricting veterans' ability to recover from the government; and most of the companies that supplied asbestos to the Federal government have either disappeared or are bankrupt and, therefore, are only able to provide a fraction of the compensation that should be paid to asbestos victims, if anything at all. Even if there is a solvent defendant company for a veteran or his/her family to pursue, there remains the lengthy, costly, and uncertain ordeal of filing a civil lawsuit and going through discovery and trial, where the plaintiff bears a heavy burden of proof and often has the very difficult to impossible task of establishing which defendant's product caused their injuries.

Criteria bills would do nothing to compensate victims like our nation's veterans who were injured by bankrupt companies during their service to our country.

Legislation imposing medical criteria in the tort system is inherently unfair to victims. Such measures do not alleviate the delays victims face when confronted with overwhelmed court dockets. Criteria bills will impose new hurdles for plaintiffs and continue to require the identification and proof of the manufacturer or entity responsible for exposing them to asbestos decades ago. In contrast, the FAIR Act Fund will not require victims to identify and prove the manufacturer or entity that exposed them to asbestos. Under the FAIR Act Fund, victims will not have to hope that the entity responsible for their exposure is financially solvent. They will recover compensation under the Fund in proportion to their impairment or disease.

The current system for compensating victims of asbestos exposure is inefficient and inequitable. A medical criteria bill is not a solution because it operates within the same tort system. A true alternative will avoid the problems with the current asbestos tort system and bankruptcy compensation process. The Fund created by S.852 will provide fair and timely compensation to all victims impaired by asbestos exposure and would bring financial certainty to defendant companies and insurers. Medical criteria proposals that would operate within the existing tort system simply would not.

#### **VIII. COST ESTIMATE**

Due to time constraints, the Congressional Budget Office estimate was not included in the report. When received by the Committee, it will appear in the Congressional record at a later time.

#### **IX. REGULATORY IMPACT STATEMENT**

Pursuant to Rule XXVI, of the Standing Rules of the Senate, the Committee, after due consideration anticipates that S. 852 will have the following regulatory impact:

A. (i) *Businesses regulated* – Under S. 852 companies and insurers with asbestos liability will be required to submit necessary financial documentation to the Asbestos Injury Claims Resolution Fund and the Insurers Commission respectively for proper assessment of contributions. With respect to the ban on certain asbestos containing products in S. 852, it is anticipated the regulatory burden will be minimal especially in light of regulation promulgated in the late 1970's and early 1980's that limited occupational exposure to asbestos.

(ii) *Individuals regulated* - Individuals seeking compensation from the Asbestos Injury Claims Resolution Fund will be required to submit necessary documentation to support their claim.

B. *Economic Impact* - S. 852 will have a positive economic impact on businesses by providing greater certainty with regard to asbestos liability exposure, which in turn will enable businesses to preserve jobs and pension for employees.